

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/FLN)  
WARMING PRODUCT LIABILITY  
LITIGATION

This Document Relates To:

ROBERT MCLAUGHLIN,  
Plaintiff,  
Civil Action No.: 17-CV-03233-JNE-FLN

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**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

NOW COMES Plaintiff, Robert McLaughlin, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1068], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In July of 2015, Mr. Robert McLaughlin contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the original surgery.
3. On July 22, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. Efforts to have Mr. McLaughlin complete the Plaintiff Fact Sheet were complicated by him not answering phone calls, returning voice messages, or responding to contact letters or emails.
5. Phone calls by Kennedy Hodges staff went unanswered on the following dates: August 16, 2017, August 21, 2017, September 27, 2017, November 27, 2017, December 4, 2017, December 8, 2017, January 26, 2018, and February 6, 2018.
6. Additionally, written correspondence consisting of letters or emails requesting that Mr. McLaughlin contact Kennedy Hodges was sent on the following dates: July 31, 2017, November 27, 2017, December 8, 2017, December 12, 2017, and February 6, 2018.
7. A staff member was able to get a hold of Mr. McLaughlin for a brief phone call on December 20, 2017. On that date, Mr. McLaughlin stated that he had been experiencing some ongoing medical issues, but that he would contact Kennedy Hodges at the beginning of the new year to go over the Plaintiff Fact Sheet. During that call, Mr. McLaughlin did not go into detail regarding the medical issues he was experiencing. However, Mr. McLaughlin has not made an attempt to contact Kennedy Hodges since that date.
8. While counsel has diligently continued efforts to obtain the necessary information from Mr. McLaughlin for several months, those efforts have not been successful to date.
9. As a result, counsel has not been able to provide additional information for the Plaintiff Fact Sheet for this claim.

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Mr. McLaughlin be given an additional sixty (60) days to contact counsel in order to provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and to continue the case.

Dated: February 8, 2018

KENNEDY HODGES, LLP

By: /s/ David W. Hodges  
David W. Hodges  
dhodges@kennedyhodges.com  
Gabriel A. Assaad  
gassAAD@kennedyhodges.com  
4409 Montrose Blvd. Ste 200  
Houston, TX 77006  
Telephone: (713) 523-0001  
Facsimile: (713) 523-1116

ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

This is to certify that on February 8, 2018 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges  
David W. Hodges